

## **PART XIV: Loan Brokers**

### **§3572.1. Loan broker defined**

A “loan broker” is defined as any person who, for compensation or the expectation of compensation, obtains or offers to obtain a consumer loan or federally related mortgage loan from a third party either for another person domiciled in Louisiana, or for another person wherever domiciled, if the broker is operating in Louisiana.

### **§3572.2. Exemptions; licensing and bonding; loan broker**

A. The following shall be excepted from the licensing and bonding provisions of this Part:

(1) A supervised financial organization that is exempt from the requirement of licensure as a licensed lender.

(2) A lender licensed by the commissioner of financial institutions to make consumer loans pursuant to the Louisiana Consumer Credit Law.

(3) An officer, director, or employee of the entities listed in Paragraph (1) or (2) of this Subsection when such person is acting within the scope of his duties to that supervised financial organization or licensed lender.

(4) Persons subject to licensing, supervision, or auditing by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Veterans Administration, or the United States Department of Housing and Urban Development as an approved seller, servicer, or issuer, provided that all brokered loans comply with a program administered by a federal agency in which the broker is approved, licensed, supervised, or audited and provided further that all broker's loans are subject to oversight by the approving federal agency.

B. The following shall be excepted from the definition of a loan broker:

(1) An attorney licensed to practice law in the state of Louisiana when such attorney is not actively engaged in the business of brokering consumer loans or federally related mortgage loans and when the brokering is incidental to the provision of other legal services.

(2) A person licensed by the Louisiana Real Estate Commission who arranges financing in the normal course of representation of a client for the purchase, sale, lease, or rental of real estate.

(3) A person licensed as an insurance agent or broker by the Louisiana Department of Insurance who arranges for the financing of insurance premiums with a financial institution or licensed insurance premium finance company, when the compensation received or expected to be received is paid only by the financial institution or insurance premium finance company.

(4) Any real estate broker or a real estate salesman who is not actively and principally engage in negotiating, placing, or finding mortgage loans when rendering professional services.

(5) Any real estate investment trust.

(6) Any securities broker-dealer registered with the federal Securities and Exchange Commission and the securities law division of the office of financial institutions, and the registered agents of the broker-dealer, when such persons are not principally engaged in negotiating, placing, or finding mortgage loans when rendering professional services.

(7) Any manufactured home dealer licensed pursuant to the provisions of R.S. 51:911.24 who arranges or assists in arranging for a customer a direct or indirect consumer of federally related mortgage loan secured in whole or in part by a manufactured home, when such dealer's business is not primarily that of a consumer loan broker.

(8) Any person who is licensed pursuant to the Residential Mortgage Lending Act, R.S. 6:1081 et seq., and whose primary business is that of a mortgage broker, mortgage lender, or both.

(9) An income tax preparer who is an authorized Internal Revenue Service e-file provider and whose only brokering activity is facilitating refund anticipation loans. For purposes of this Paragraph, "refund anticipation loan" means a loan whereby the creditor arranges to be repaid directly by the Internal Revenue Service from the anticipated proceeds of the debtor's income tax refund.

### **§3572.3. Licensure required**

A. (1) Unless a person has first been licensed by the commissioner as provided in this Part, he shall not engage in the business of loan brokering, and shall not advertise or solicit, whether in print, by letter, in person, or otherwise in Louisiana, that he will find lenders for consumer loans or federally related mortgage loans. The initial license and annual renewal fee shall be five hundred dollars. However, a natural person through whom a corporation brokers loans pursuant to R.S. 9:3572.4 shall pay an initial license and annual renewal fee of one hundred dollars. No portion of the fee shall be refunded if the application is denied.

(2) The annual renewal application and fee are due on or before January first of each year. The form and content of renewal applications shall be determined by the commissioner of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application, or may be denied if administrative proceedings to suspend or revoke the license have begun. If the commissioner has not received the annual renewal application and fee postmarked on or before January sixteenth, he shall notify the loan broker by United States mail and assess a late fee of one hundred dollars.

(3) If the commissioner has not received the annual renewal application, renewal fee and late fee postmarked on or before March thirty-first, the license shall automatically lapse without a hearing or notification, and any consumer loan or federally related mortgage loan brokered after that date shall be a violation and punishable pursuant to R.S. 9:3572.12(B).

B.(1) In the event that a broker wishes to change its name, location, or mailing address, it shall notify the commissioner by written notice within thirty days prior to such change and submit a fee of fifty dollars. If the broker fails to notify the commissioner or remit the required fee within the required thirty days, the commissioner may assess the licensee one hundred dollars as a penalty.

(2) If any information furnished by the broker becomes inaccurate after its filing, the broker shall correct the inaccuracy by written notice to the commissioner within thirty days after the information becomes inaccurate. No additional fee shall be required.

#### **§3572.4. Corporation**

A corporation that is a loan broker shall be licensed and shall act as a loan broker only through natural persons who are loan brokers.

#### **§3572.5. Application form**

A. The commissioner of financial institutions shall provide an application form that requires at least the following information which shall be given by the applicant:

(1) For a natural person:

(a) Full name.

(b) Date of birth.

(c) Place of birth.

(d) Business address.

(e) Home address.

(f) Name and address of employer.

(g) Names and addresses of the lenders through which the principal amount of the consumer loans or federally related mortgage loans are brokered.

(h) Number of consumer loans or federally related mortgage loans brokered in the past one-year period.

(i) A certified copy of the bond or of the formal notification by the depository of the establishment of the trust account required by R.S. 9:3572.8.

(2) For a corporation:

(a) Name.

(b) Copy of the certificate of incorporation if a Louisiana corporation.

(c) Copy of certificate authorizing the corporation to do business in Louisiana, if a foreign corporation.

- (d) Address of the corporation in Louisiana.
- (e) Address of the main corporate office, if outside of Louisiana.
- (f) Name and address of president, secretary, and treasurer of the corporation.
- (g) Name of each licensed loan broker through which it will conduct business.
- (h) Names and addresses of the lenders through which the principal amount of consumer loans or federally related mortgage loans are brokered.
- (i) Number of consumer loans or federally related mortgage loans brokered in the past one-year period.
- (j) A certified copy of the bond or of the formal notification by the depository of the establishment of the trust account required by R.S. 9:3572.8.

B. (1) The commissioner may deny an application if he finds that the financial responsibility, character, and fitness of the applicant and its principals, owners, officers, directors, partners, and members, and the character and fitness of its managers are such as to warrant a belief that the business will not be operated honestly and fairly within the purposes of this Part.

(2) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a loan broker license if either of the following occurs:

(a) The commissioner has notified the applicant in writing that his application has been denied.

(b) The commissioner has not issued a permit within sixty days after the application therefor was filed.

(3) A request for a hearing may not be made more than fifteen days after the commissioner has mailed a written notice to the applicant notifying him that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

#### **§3572.6. Restrictions; records**

A. A loan broker shall broker a consumer loan or federally related mortgage loan only to a lender licensed by the office of financial institutions, or to a supervised financial organization or a lender that is exempt from licensure.

B.(1) Each loan broker shall maintain a copy of all Federal Disclosure Statements from each loan that he brokers and a copy of the signed "Loan Brokerage Agreement and Disclosure Statement" given to each person pursuant to R.S. 9:3572.11, which shall be available for inspection.

(2) If the records of the loan broker are located outside this state, the broker shall, at the option of the commissioner, make such records available to the commissioner at a specified location within this state convenient to the commissioner, or the broker shall pay

the reasonable and necessary expenses for the commissioner to examine the records at the location specified in the records of the office. The commissioner may designate representatives from his office or, if available and more practical, officials serving in similar capacity in the state in which the records are located to inspect them on his behalf.

C. Except as specified by this Part, no loan broker may assess, contract for, or receive any type of fee, interest, or other charge in advance, except for expense deposits under conditions specified in this Subsection, from a potential borrower for the procurement of a loan. A loan broker may accept an advance expense deposit, but such deposit shall not exceed the good faith estimate of the actual cost of any appraisal, title search, ~~or~~ credit reports performed by an independent person and required by the originating lender for the evaluation of the potential borrower's loan application, or the actual cost of any charge of no more than twenty-five dollars assessed to a loan broker by Fannie Mae for "Desktop Underwriter" or Freddie Mac for "Loan Prospector". Any expense deposit that exceeds the actual cost of any appraisal, title search, credit reports, or charge assessed to a loan broker by Fannie Mae for "Desktop Underwriter" or Freddie Mac for "Loan Prospector" must be promptly refunded to the borrower or credited to the borrower's account at the time of the loan closing.

#### **§3572.7. Examination; rules**

A. The commissioner of financial institutions, through his employees, may examine the records of a loan broker at any time during normal business hours without prior notice.

B. The commissioner may issue rules and regulations to implement this Part and may require that additional information be disclosed in the licensure form.

#### **§3572.8. Bond or trust account required**

A. Every loan broker, except those loan brokers employed by a corporation with a valid loan broker's license, must obtain a surety bond issued by a surety company authorized to do business in Louisiana, or establish a trust account with a federally insured bank or savings institution located in Louisiana. The amount of the bond or trust account shall be twenty-five thousand dollars. The bond or trust account shall be in favor of the state of Louisiana. Any person damaged by the loan broker's breach of contract or of any obligation arising therefrom, or by any violation of law, or the attorney general seeking additional relief from R.S. 51:1408, may bring an action against the bond or trust account to recover monies therefrom. The aggregate liability of the surety or trustee shall be only for actual damages or additional relief under R.S. 51:1408 and in no event shall exceed the amount of the bond or trust account.

B. The term of the bond shall be continuous, but it shall be subject to termination by the surety upon giving sixty days written notice to the principal and to the commissioner. The bond shall continue in effect during the sixty-day period.

C. A copy of said bond shall be conspicuously posted at any business location of the broker near the location where payments are received.

D. It shall be unlawful for any loan broker or its agent or employee to post an expired bond or a bond which does not meet the requirements of this Section.

#### **§3572.9. Rebate upon prepayment**

Whenever a lender that funded a brokered consumer loan or federally related mortgage loan is required to rebate unearned loan finance charges or credit service charges to the consumer due to prepayment or the acceleration of maturity, the loan broker shall refund to the lender the proportion of the broker's fee that must be rebated by the lender. This refund shall be made within seven days of the lender's furnishing proof to the broker of the required rebate.

#### **§3572.10. Right of cancellation**

An applicant for a consumer or federally related mortgage loan shall have the right to cancel a "Loan Brokerage Agreement and Disclosure Statement" required by R.S. 9:3572.11 within five business days of signing such agreement. The applicant may exercise the right to cancel until midnight of the fifth business day following his signing of such statement. The applicant borrower shall have been considered to have exercised his right of cancellation when written notification has been postmarked or otherwise delivered to the loan broker's designated place of business within the prescribed time.

#### **§3572.11. Loan brokerage statement; disclosure statement required**

A.(1) Each application for a consumer or federally related mortgage loan in which a loan broker is involved shall be accompanied by a written "Loan Brokerage Agreement and Disclosure Statement" which shall be signed by all contracting parties. A copy of the signed agreement shall be presented to the applicant at the time of signing.

(2) The initial paragraph of the "Loan Brokerage Agreement and Disclosure Statement" shall be entitled in at least ten point bold-face capital letters "DISCLOSURE REQUIRED BY LOUISIANA LAW". Under this title shall appear the statement in at least ten point type that "The state of Louisiana does not approve or disapprove any loan brokerage contract. The information contained in this disclosure has not been verified by the state. If you have any questions see an attorney before you sign a contract agreement."

B. The "Loan Brokerage Agreement and Disclosure Statement" shall contain the following information:

(1) The name of the loan broker; whether the loan broker is doing business as an individual, partnership, limited liability company, or corporation; the names under which the loan broker has done, is doing, or intends to do business; and the name of any parent or affiliated companies providing a settlement service.

(2) Repealed by Acts 1999, No. 1160, § 2.

(3) The length of time the loan broker has conducted business as a loan broker.

(4) A full and detailed description of the actual services that the loan broker undertakes to perform for the prospective borrower.

(5) One of the following statements, whichever is appropriate:

(a) "As required by Louisiana law, this loan broker has secured a bond by \_\_\_\_\_, a surety authorized to do business in this state. A certified copy of this bond is filed with the

commissioner of financial institutions. Before signing a contract with this loan broker, you should check with the surety company to determine the bond's current status", or

(b) "As required by Louisiana law, this loan broker has established a trust account (number of account) with (name/address of bank or savings institution). Before signing a contract with this loan broker you should check with the bank or savings institution to determine the current status of the trust account."

### **§3572.12. Violations; penalties**

A. A loan made in violation of this Part shall not be invalid solely for that reason.

B. A person who violates a provision of this Part may be assessed a civil penalty of not more than one thousand dollars for each violation. The commissioner may maintain a civil action in a court of competent jurisdiction to recover such a civil penalty, together with his costs and attorney fees incident to such action.

C. (1) The commissioner may, after a hearing pursuant to the Administrative Procedure Act, suspend or revoke the license of a loan broker, upon a finding that any fact or condition exists which, if it had existed at the time of the original application for licensure, would have warranted the denying of its issuance.

(2) The commissioner may, after a hearing pursuant to the Administrative Procedure Act, suspend or revoke the license of a loan broker, upon a finding that the loan broker violated a provision of this Part or a rule or regulation of the commissioner issued pursuant thereto, or that the loan broker willfully, either orally or in writing, misrepresented the terms, benefits, privileges, or provisions of any service contract issued or to be issued by the loan broker or by any lender.

D. The contracting to receive any fee, interest, or other charge in violation of this Chapter shall result in forfeiture by the loan broker to the benefit of the aggrieved person of the entire fee, plus damages in the amount of twice the fee. In case the fee has been paid, the person by whom it has been paid may recover from the loan broker the amount of the fee thus paid, plus damages in the amount of twice the fee.

E. Whenever it shall appear to the commissioner, either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act, practice, or transaction which is prohibited by this Part or by any order of the commissioner issued pursuant to any Section of this Part, or which is declared to be illegal in this Part, the commissioner may, in his discretion:

(1) Issue any order, including but not limited to cease and desist orders, which he deems necessary or appropriate in the public interest or for the protection of the public. Any person aggrieved by an order issued pursuant to this Subsection may request a hearing before the commissioner if such request is made within ten days after receipt of the order. Any such hearing or appeal therefrom shall be held in accordance with the Administrative Procedure Act.

(2) Apply to the district court of any parish in this state for an injunction restraining such person and the agents, employees, partners, officers, and directors of such person from continuing such act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as he deems necessary.